

**ORDINANCE NO. 14**  
**(Series 2015)**

**AN ORDINANCE ADOPTING A NEW CHAPTER 3.24 OF TITLE 3 OF THE  
GEORGETOWN MUNICIPAL CODE ENTITLED MARIJUANA OCCUPATION TAX**

**WHEREAS**, by Resolution No. 24, Series of 2015, the Board of Selectmen referred a ballot question to the electorate of the Town concerning imposition of a tax on the occupation of selling retail and wholesale marijuana products (but not on the sale of medical marijuana products) in form and style as follows:

SHALL THE TOWN OF GEORGETOWN TAXES BE INCREASED BY AN ESTIMATED \$100,000 IN 2016 (FIRST FULL FISCAL YEAR OF SUCH TAX INCREASE) AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER BY IMPOSING, EFFECTIVE JANUARY 1, 2016. A NEW OCCUPATION TAX ON THE OCCUPATION OF SELLING WITHIN THE TOWN RETAIL AND WHOLESALE MARIJUANA AND RETAIL AND WHOLESALE MARIJUANA PRODUCTS PERMITTED BY ARTICLE XVIII, SECTION 16 OF THE COLORADO CONSTITUTION (BUT NOT ON THE SALE OF MEDICAL MARIJUANA PURSUANT TO ARTICLE VIII, SECTION 14 OF THE COLORADO CONSTITUTION), SUCH TAX TO BE IMPOSED AT A MAXIMUM RATE OF FIVE DOLLARS PER SINGLE RETAIL OR WHOLESALE TRANSACTION FOR THE SALE OF SUCH PRODUCTS WITHIN THE TOWN (WHICH TAX MAY BE ADJUSTED FROM TIME TO TIME BY THE BOARD OF SELECTMEN WITHOUT FURTHER ELECTIONS SO LONG AS IT DOES NOT EXCEED FIVE DOLLARS PER TRANSACTION) IN ACCORDANCE WITH ANY ORDINANCES HEREAFTER APPROVED BY THE BOARD OF SELECTMEN, AND SHALL THE PROCEEDS OF ANY SUCH TAXES AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT BY THE TOWN AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, ARTICLE I, TITLE 29 OF THE COLORADO REVISED STATUTES OR ANY OTHER LAW?

and;

**WHEREAS**, at the special Town election coordinated with the County held on November 3, 2015 the electorate of the Town approved the referred ballot question; and

**WHEREAS**, in the exercise of the authority granted by approval of the ballot question, the Board of Selectmen wishes to enact and codify said tax and provide for its imposition and collection.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF SELECTMEN OF**

**THE TOWN OF GEORGETOWN, COLORADO:**

**Section 1.** Title 3 of the Georgetown Municipal Code is hereby amended by the addition of a new Chapter 3.24, to read as follows:

CHAPTER 3.24  
Marijuana Occupation Tax

Sections:

3.24.010	Purpose
3.24.020	Definitions
3.24.030	Occupational tax imposed
3.24.040	Tax rates; adjustments
3.24.050	Exemptions
3.24.060	Collection of tax
3.24.070	Audit of records
3.24.080	Tax Overpayments and deficiencies
3.24.090	Tax information confidential
3.24.100	Forms and regulations
3.24.110	Enforcement and penalties
3.24.120	Tax lien
3.24.130	Recovery of unpaid tax
3.24.140	Status of unpaid tax in bankruptcy and receivership
3.24.150	Hearing, subpoenas and witness fees
3.24.160	Deposition
3.24.170	Limitations on actions
3.24.180	Exemption from revenue limitation

**3.24.010 Purpose.** The Board of Selectmen hereby finds, determines and declares:

A. For the purposes of this Chapter, every Retail Marijuana Store, Retail Marijuana Cultivation Facility and Retail Marijuana Products Manufacturer, as such terms are defined in the Retail Marijuana Code, Sections 12-43.4-10 *et. seq.* C.R.S., that sells or furnishes Retail Marijuana or Retail Marijuana Products, Wholesale Marijuana or Wholesale Marijuana Products within the Town of Georgetown for consideration is exercising a taxable privilege. The purpose of this Chapter is to impose a tax which will be paid by every Retail Marijuana Establishment providing such items in the Town of Georgetown, which tax will provide additional revenues for the Town of Georgetown;

B. The provision of Retail and Wholesale Marijuana and Retail and Wholesale Marijuana Products by establishments results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services such as police protection and has a substantial affect upon the health, safety and welfare of the citizens of the Town of Georgetown and upon the expenditures budgeted by the Town, which is a matter of local concern; and

C. The classification of Retail Marijuana Establishments as separate businesses and occupations is reasonable, proper, uniform and nondiscriminatory; and the taxable amount hereby levied is reasonable, proper, uniform, nondiscriminatory, and necessary.

**3.24.020 Definitions.**

When not clearly otherwise indicated by the context, the following words and phrases as used in this Chapter shall have the following meanings:

A. “Person” means an individual, partnership, firm, joint enterprise, limited liability company, corporation, estate or trust, or any group or combination acting as a unit, but shall not include the United States of America, the State of Colorado and any political subdivision thereof.

B. “Retail Marijuana” means “marijuana” or “marihuana” as defined in Section 16 (2)(f) of Article XVIII of the Colorado Constitution that is cultivated, manufactured, distributed, or sold by a licensed Retail Marijuana Establishment that is grown and sold for a purpose authorized by Article XVIII, Section 16 of the Colorado Constitution.

C. “Retail Marijuana Cultivation Facility” has the same meaning as “marijuana cultivation facility” as defined in Section 16 (2)(h) of Article XVIII of the Colorado Constitution.

D. “Retail Marijuana Establishment” or “Retail Marijuana Business” means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, or a Retail Marijuana Products Manufacturer.

E. “Retail Marijuana Products” means “marijuana products” as defined in Section 16 (2)(k) of Article XVIII of the Colorado Constitution that are produced at a Retail Marijuana Products Manufacturer.

F. “Retail Marijuana Products Manufacturer” has the same meaning as “marijuana product manufacturing facility” as defined in Section 16 (2)(n) of Article XVIII of the Colorado Constitution.

G. “Retail Marijuana Store” has the same meaning as defined in Section 16(2)(n) of Article XVIII of the Colorado Constitution.

H. “Sale” means the furnishing for consideration by any Person of Retail Marijuana, Retail Marijuana Products, wholesale Marijuana or Wholesale Marijuana Products to another Person within the Town.

I. “Tax” means the Tax payable by the Vendor or the aggregate amount of Taxes due from Vendor during the period for which the Vendor is required to pay the occupation Tax on the sale and purchase of Retail and Wholesale Marijuana, Retail and Wholesale Marijuana Products under this Chapter.

J. “Taxpayer” means the Vendor obligated to pay the Tax under the terms of this Chapter.

K. “Vendor” means a person furnishing Retail or Wholesale Marijuana and Retail or Wholesale Marijuana Products to a Person for consideration within the Town.

L. “Wholesale marijuana” means marijuana intended for sale to another wholesaler or to a retail Vendor

M. “Wholesale marijuana products” means marijuana products intended for sale to another wholesaler or to a retail Vendor.

### **3.24.030 Occupation tax imposed.**

Pursuant to the authority granted by the Town’s electorate on November 3, 2015, effective January 1, 2016, there is imposed a tax on the occupation of selling within the Town retail and wholesale marijuana and retail and wholesale marijuana products permitted by Article XVIII, Section 16 of the Colorado Constitution (but not on the sale of medical marijuana pursuant to Article VIII, Section 14 of the Colorado Constitution).

### **3.24.040 Tax rates; adjustments.**

The Tax imposed by this Chapter shall be at the rate of fifty cents (\$0.50) per single retail transaction and fifty cents (\$0.50) per single wholesale transaction for the sale of marijuana and marijuana products described in Section 3.24.030. These Tax rates may be adjusted from time to time by the Board of Selectmen, acting by resolution, provided no Tax rate shall exceed five dollars (\$5.00) per transaction.

### **3.24.050 Exemptions.**

This Chapter and the Tax imposed herein shall not be applicable to transactions between Retail Marijuana Establishments owned by the same Person or business entity, nor to the sale of medical marijuana or medical marijuana products.

### **3.24.060 Collection of tax.**

A. Every Vendor providing Retail or Wholesale Marijuana or Retail or Wholesale Marijuana Products under this Chapter shall remit such Tax on or before the tenth (10th) day of each month on account of transactions in the preceding month. Said payment shall be accompanied by a return which shall contain such information and be in such form as the Town Treasurer may prescribe.

B. The burden of proving that any transaction is exempt from the Tax shall be upon the Vendor.

C. If the accounting methods regularly employed by the Vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the Town Treasurer may, upon request of the Vendor, accept returns at such intervals as will, in the Town Treasurer’s opinion, better suit the convenience of the Vendor and will not jeopardize the collection of the Tax; provided, however, the Town Treasurer may by rule permit a Vendor whose monthly Tax obligation is less than one hundred dollars (\$100.00) to make returns and pay Taxes at intervals not greater than three (3) months.

D. It shall be the duty of every Vendor to maintain, keep and preserve suitable records of all sales made by the Vendor and such other books or accounts as may be required by the Town Treasurer in order to determine the amount of the Tax of which the Vendor is liable under this Chapter. It shall be the duty of every such Vendor to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Town Treasurer or designee.

E. The Tax to be paid by a Vendor shall not be stated and charged separately from the sale price of Retail or Wholesale Marijuana or Retail or Wholesale Marijuana Products on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued, provided, a Vendor may indicate the sale price “includes Town of Georgetown Retail Marijuana Occupation Tax.”

### **3.24.070 Audit of records.**

A. For the purpose of ascertaining the correct amount of the Tax due from any Person under this Chapter, the Town Treasurer or an authorized agent, may conduct an audit by examining any relevant books, accounts and records of such Person.

B. All books, invoices, accounts and other records shall be made available within the Town limits and be open at any time during regular business hours for examination by the Town Treasurer or an authorized agent. If any Taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Town Treasurer may issue a subpoena to require that the Taxpayer or its representative to attend a hearing or produce any such books, accounts and records for examination. Any such subpoena shall be enforced by the Georgetown Municipal Court.

C. Any Person claiming an exemption under the provisions of this Chapter is subject to audit in the same manner as any other Person engaged in the sale of Retail or Wholesale Marijuana or Retail or Wholesale Marijuana Products in the Town.

### **3.24.080 Tax overpayments and deficiencies.**

An application for refund of Tax monies paid in error or by mistake shall be made within three (3) years after the date of payment for which the refund is claimed. If the Town Treasurer determines that within three (3) years of the due date, a Vendor overpaid the occupation Tax he/she shall process a refund or allow a credit against a future remittance from the same Taxpayer. If at any time the Town Treasurer determines the amount paid is less than the amount due under this Chapter, the difference, together with the interest shall be paid by the Vendor within ten (10) days after receiving written notice and demand from the Town Treasurer. The Town Treasurer may extend that time for good cause.

### **3.24.090 Tax information confidential.**

A. All specific information gained under the provisions of this Chapter which is used to determine the Tax due from a Taxpayer, whether furnished by the Taxpayer or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as

confidential. Except as directed by judicial order or as provided in this Chapter, no Town officer, employee, or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any Town officer or employee who shall knowingly divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in this Chapter or by law, shall be guilty of a violation hereof.

B. The Town Treasurer may furnish to officials of any other governmental entity who may be owed sales Tax any confidential information, provided that said jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town.

C. Nothing contained in this Section shall be construed to prohibit the delivery to a Taxpayer or its duly authorized representative a copy of such confidential information relating to such Taxpayer, the publication of statistics so classified as to prevent the identification of particular Taxpayers, or the inspection of such confidential information by an officer, employee, or legal representative of the Town.

#### **3.24.100 Forms and regulations.**

The Town Treasurer is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the occupation Tax and in particular and without limiting the general language of this Chapter, to provide for:

A. A form of report on the provision of Retail and Wholesale Marijuana and Retail and Wholesale Marijuana Products which shall be supplied to all Vendors; and

B. The records which Retail Marijuana Establishments are to keep concerning the Tax imposed by this Chapter.

#### **3.24.110 Enforcement and penalties.**

A. It shall be unlawful for any Person to intentionally, knowingly, or recklessly fail to pay the Tax imposed by this Chapter, or to make any false or fraudulent return, or for any Person to otherwise violate any provisions of this Chapter. Each day that any violation of this Chapter continues shall constitute a separate offense.

B. A penalty in the amount of ten percent (10%) of the Tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the Retail Marijuana Establishment and become due in the event the Tax is not remitted by the tenth (10th) day of the month as required by this Chapter, or such other date as prescribed by the Town Treasurer, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance. The Town Treasurer is hereby authorized to waive, for good cause shown, any penalty assessed.

C. If any part of a deficiency is due to negligence or intentional disregard of regulations, but without intent to defraud, there shall be added ten percent (10%) of the total

amount of the deficiency, and interest, from the Retail Marijuana Establishment required to file a return. If any part of the deficiency is due to fraud with the intent to evade the Tax, then there shall be added fifty percent (50%) of the total amount of the deficiency together with interest and in such case, the whole amount of the unpaid Tax, including the additions, shall become due and payable ten (10) days after written notice and demand by the Town Treasurer.

D. If any Retail Marijuana Establishment fails to make a return and pay the Tax imposed by this Chapter, the Town may make an estimate, based upon available information of the amount of Tax due and add the penalty and interest provided above. The Town shall mail notice of such estimate, by certified mail, to the Retail Marijuana Business at its address as indicated in the Town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the Taxpayer to the Town Treasurer ten (10) days from the date of service of the notice or the date of mailing by certified mail; provided, however, that within the ten (10) day period such delinquent Taxpayer may petition the Town Treasurer for a revision or modification of such assessment and shall, within such ten (10) day period, furnish the Town Treasurer the documents, facts and figures showing the correct amount of such Taxes due and owing.

E. Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally, and shall be given by the Taxpayer under penalty of perjury. Thereupon, the Town Treasurer may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Chapter. Such assessment shall be considered the final order of the Town Treasurer, and may be reviewed by a Court of competent jurisdiction under the Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the Taxpayer gives written notice to the Town Treasurer of such intention within ten (10) days after receipt of the final order of assessment.

### **3.24.120 Tax lien.**

A. The Tax imposed by this Chapter, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be, and until paid, remain a first and prior lien superior to all other liens on all of the tangible personal property of a Taxpayer within the Town and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Town Treasurer whenever the Taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any Town peace officer, the Clear Creek County Sheriff or any duly authorized employee of the Town. The property so seized may be sold by the agency seizing the same or by the Town Treasurer at public auction after ten (10) days have passed following an advertised notice in a legal newspaper circulated in the Town, in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply.

B. The Tax imposed by this Chapter shall be and remain a first and prior lien superior to all other liens on the real property and appurtenant premises at which the Taxable transactions occurred.



### **3.24.130 Recovery of unpaid tax.**

A. The Town Treasurer may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the Taxpayer.

B. In case of failure to pay the Taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Town Treasurer may recover at law the amount of such Taxes, penalties, costs, the reasonable value of any salaried attorney's time, including legal assistant's time, or the reasonable attorney's fees, including legal assistant's fees, charged by the Town's contract attorney, plus interest, in any county or district court of the county wherein the Taxpayer resides or had a principal place of business (at the time the Tax became due) having jurisdiction of the amount sought to be collected.

C. The return of the Taxpayer or the assessment made by the Town Treasurer shall be prima facie proof of the amount due.

D. The Town may certify the amount of any delinquent Tax, plus interest, penalties and the costs of collection, as a charge against the property at which the Taxable transaction occurred to the County Treasurer for collection in the same manner as delinquent ad valorem Taxes pursuant to Section 31-20-105, C.R.S.

### **3.24.140 Status of unpaid tax in bankruptcy and receivership.**

Whenever the business or property of a Taxpayer subject to this Chapter shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all Taxes, penalties and interest imposed by this Chapter and for which the Taxpayer is in any way liable under the terms of this Chapter shall be a prior and preferred lien against all the property of the Taxpayer, except as to other Tax liens which have attached prior to the filing of the notice, and no sheriff, receiver, assignee or other officer shall sell the property of any Person subject to this Chapter under process or order of any court, without first ascertaining from the Town Treasurer the amount of any Taxes due and payable under this Chapter, and if there be any such Taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the Taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting Tax liens as above provided.

### **3.24.150 Hearings, subpoenas and witness fees.**

A. Hearings before the Town Treasurer pursuant to provisions in this Chapter shall be held in a manner that provides due process of law. Any subpoena issued pursuant to this Chapter may be enforced by the Georgetown Municipal Judge pursuant to Section 13-10-112(2), C.R.S. The fees of witnesses for attendance at hearings shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Town Treasurer, such fees shall be paid in the same manner as other expenses under the terms of this Chapter, and when a witness is subpoenaed at the instance of any party to any such proceeding, the Town Treasurer may require that the cost of service of the subpoena and the fee of the witness be borne by the

party at whose instance the witness is summoned. In such case, the Town Treasurer, at her discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued pursuant to this Section shall be served in the same manner as a subpoena issued out of a court of record.

B. The Georgetown Municipal Judge, upon the application of the Town Treasurer, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Town Treasurer or any duly authorized hearing officers, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court.

### **3.24.160 Depositions.**

The Town Treasurer or any party in an investigation or hearing before the Town Treasurer may cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

### **3.24.170 Limitation on actions.**

A. Except as otherwise provided in this Section, the Taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Chapter shall not be assessed, nor shall a notice of lien be filed, or distraint warrant be issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the Tax was or is payable, nor shall any lien continue after such period, except for Taxes assessed before the expiration of such three (3) year period when the notice of lien with respect to which has been filed prior to the expiration of such period.

B. In case of a false or fraudulent return with intent to evade Taxation, the Tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such Taxes may be commenced at any time.

C. Before the expiration of such period of limitation, the Taxpayer and the Town Treasurer may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

### **3.24.180 Exemption from revenue limitations.**

In accordance with the approval of the registered electors voting at the November 3, 2015 coordinated election, the revenues derived from the Tax imposed by this Chapter shall be collected and spent as a voter approved revenue change, notwithstanding any revenue or expenditure limitations contained in Article X, Section 20, of the Colorado Constitution, Article 1, Title 29 of the Colorado Revised Statutes or any other law.

**Section 2.** **Effective date.** This ordinance shall take effect upon adoption and posting as provided by Section 5.26 of the Territorial Charter.

**INTRODUCED, READ, APPROVED AND ORDERED POSTED IN FULL ON  
FIRST READING ON THE 24th DAY OF NOVEMBER, 2015.**

**INTRODUCED ON SECOND READING, FINALLY ADOPTED AND ORDERED  
POSTED AFTER PUBLIC HEARING ON THE 8th DAY OF DECEMBER, 2015.**

TOWN OF GEORGETOWN

By: \_\_\_\_\_

Matthew D. Skeen, Police Judge

ATTEST:

\_\_\_\_\_  
Jennifer Yobski, Town Clerk

Posted up in full on the Town's website and at Town Hall and two (2) other designated posting locations within the limits of the Town after final adoption, in accordance with Section 5.26 of the Territorial Charter.

\_\_\_\_\_  
Jennifer Yobski, Town Clerk

Date: \_\_\_\_\_